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CLEARINGHOUSE RULE 96-136

Comments

[NOTE: All citations to “Manual” in the comments below are to the Administrative Rules Procedures Manual, prepared by the Revisor of Statutes Bureau and the Legislative Council Staff, dated October 1994.]

2. Form, Style and Placement in Administrative Code

a. The second paragraph of the analysis states that the rules have been updated to reflect the change in name of the Unemployment Compensation Division to the Division of Unemployment Insurance. However, the rule leaves in place the title to ch. LIRC 2, Unemployment Compensation. In addition, s. LIRC 1.02, as amended by the rule, refers to “unemployment compensation” several times.

b. In order to be consistent with prior text of the rule, the phrase “last day for appeal” in the last sentence of s. LIRC 1.02 (intro.) should be changed to “last day of an appeal period.” In addition, it appears in that sentence that “may” should be changed to “shall.”

c. All subunits of a rule, except introductory material, should end with a period rather than a semicolon or the word “or” or “and.” [See s. 1.03 (intro.), Manual.] For example, all of the subsections in s. LIRC 1.02 should end with periods. In s. LIRC 2.015, three subsections end with semicolons and four end with periods; all seven should end with periods.

d. In s. LIRC 1.027, the first occurrence of the phrase “the petition” should be changed to “a petition for commission review.” In addition, it is unclear whether the term “receipt” refers to receipt of the petition by the commission or by the party opposing the petition for commission review. In addition, must petitions, cross-petitions and answers filed with the commission be furnished to the opposing party, as must briefs and memoranda under s. LIRC 1.07?

e. The last sentence in s. LIRC 1.04 appears to conflict with s. 108.09 (5) (d), Stats. The rule states that the commission may, in its discretion, consider the hearing tapes or a tran-

script of the hearing testimony. However, the statute provides that the commission shall direct the preparation of a transcript if a party shows to the commission that a synopsis is not sufficiently complete and accurate to fairly reflect the relevant and material testimony and other evidence taken.

f. In s. LIRC 1.045, “the” should replace “such.”

g. The first sentence of s. LIRC 1.05 is merely descriptive and should be placed in a note following the rule. In the alternative, the word “does” could be replaced with “shall.” In addition, it appears that “may,” in the second sentence of that section, should be changed to “shall.” If “may” is retained, the rule should be expanded to provide objective standards to be followed when determining whether a case shall be remanded to the Department of Workforce Development. Finally, it is unclear what is meant by the phrase “to act on behalf of the commission” in that sentence. That phrase should be replaced with more precise language describing what the Department of Workforce Development must do when a case is remanded.

h. The material in the first sentence of s. LIRC 1.06 is merely descriptive and should be placed in a note following the rule. In addition, the phrase “in its discretion” in the second sentence of that section is superfluous. This latter comment also applies to s. LIRC 1.04.

i. In the third sentence in s. LIRC 1.07, the rule should set forth objective standards for the commission to follow when determining whether to grant a request to file a brief.

j. It appears that s. LIRC 2.04 does not provide for obtaining a transcript for the purposes of commission review of an administrative law judge’s decision, as is provided for in s. LIRC 3.02 for worker’s compensation. Is this intended?

k. Current s. LIRC 3.02 sets forth the procedures to be followed for filing an answer to a petition for commission review and for the commission to set aside the findings and order of an administrative law judge. Apparently, newly created s. LIRC 1.027 is intended, in part, to replace s. LIRC 3.02. However, s. LIRC 1.027 does not address the commission’s procedure for setting aside the findings and order of an administrative law judge. Should this issue be addressed?

l. It appears that s. LIRC 4.03 would be more informative if it set forth the procedure to be followed and grounds for the commission to set aside, modify or change its prior decisions. In addition, does that procedure apply to decisions under chs. LIRC 2 and 3, as well as ch. LIRC 4? If so, the relevant information should be set forth in chs. LIRC 2 and 3.

m. Because s. LIRC 4.04 is repealed and recreated, none of the text set forth in that section should be stricken or underscored. In addition, s. LIRC 4.04 (1) and (2) should clearly state to which types of commission orders or decisions the subsections apply. The titles to the subsections are not sufficient to convey this information as titles to any unit of a rule are not part of the substance of the rule itself. [See s. 1.05 (3) (a), Manual.]

4. Adequacy of References to Related Statutes, Rules and Forms

- a. In s. LIRC 2.01 (2) (b), the correct reference to the administrative rule should be “par. (a)” rather than “sub. (2) (a).”
- b. Section LIRC 3.01 should contain a reference to the statute or administrative rule under which petitions for commission review under ch. LIRC 3 arise. For example, see the references to ss. 108.09 and 108.10, Stats., in s. LIRC 2.01 (1). This comment also applies to s. LIRC 4.01.
- c. Section LIRC 3.02 refers to s. Ind 80.14. Should this be changed to an ILHR cite?
- d. In s. LIRC 4.03, “Stats.” should follow the two statutory citations.

5. Clarity, Grammar, Punctuation and Use of Plain Language

- a. Section LIRC 1.045 should specify the circumstances under which the commission will charge or waive the fee for photocopying.
- b. Section LIRC 1.07 should specify who must furnish copies of the briefs or memoranda to the opposing party.
- c. In s. LIRC 2.01 (2) (b), the phrase “or by a qualified employe of the agent state in which the interstate claimant files claim” does not make sense in the context of the introductory material preceding that paragraph. Also, should “, at” be inserted before “one”?
- d. Section LIRC 4.04 (2) should be expanded to include information paralleling that provided in sub. (1). The statutory section cited in sub. (2) does not contain the same level of detail and specificity as does s. LIRC 4.04 (1). For example, the statute does not specify who must receive copies of the petition, the time frame for serving parties with a copy of the petition, the method of serving the petition and the information to be contained in the petition. Also, the statute cited should be more specific--“s. 106.04 (10) (c), Stats.”